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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re V.S., a Person Coming Under the Juvenile Court Law.	B291013 (Los Angeles County Super. Ct. No. DK09072)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Victor G. Viramontes, Judge. Conditionally affirmed and remanded with directions.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Amir Pichvai for Plaintiff and Respondent.

A.S. (Mother) appeals an order terminating her parental rights over her daughter, V.S. Years earlier, when Mother was detained from her legal guardians and placed in foster care, her grandmother (V.S.'s maternal great-grandmother)[1] told a dependency investigator that "there may be Native American heritage from [Mother's] grandfather's side of the family" and "the tribes may be Cherokee or Chippewa." The appellate record does not indicate whether or how the Los Angeles County Department of Children and Family Services (the Department) investigated Mother's possible Chippewa ancestry in that earlier case, but we know that in this one, the Department did not provide notice of the juvenile court proceedings to any Chippewa tribes. We consider whether such notice should have been given under the Indian Child Welfare Act (ICWA) and related California law.

I. BACKGROUND

Mother, herself a victim of neglect and sexual abuse, was 15 years old when she ran away from a foster care placement in California. Just after she turned 17, Mother gave birth to V.S.

When V.S. was five months old, the Department filed a petition alleging Mother's history of substance abuse interfered with her ability to care for V.S. V.S. was taken into protective custody and Mother was arrested on two outstanding warrants.

In a report prepared in advance of the juvenile court jurisdiction hearing, the Department recounted V.S.'s maternal

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[1] We discuss some of the same individuals in connection with separate juvenile court proceedings concerning V.S. and Mother. To avoid confusion, we will consistently refer to these individuals in terms of their relationship to V.S.

grandmother's statement that she and Mother "have American Indian heritage and belong to the Cherokee tribe." The maternal grandmother could not identify a specific Cherokee tribe in which she or Mother would be eligible to enroll. She explained "she only recently learned of this heritage and it is from the Maternal Great Grandfather's side of the family." Mother also completed a Parental Notification of Indian Status form that indicated V.S. could be eligible to be a member of a Cherokee tribe. At the jurisdiction hearing, the juvenile court amended and sustained the allegation concerning Mother's substance abuse, which Mother did not contest.

In a subsequent interim review report, the Department indicated the maternal grandmother had reiterated she believed she had American Indian heritage. According to the report, the maternal grandmother further "stated that she sent some paperwork to the Cherokee Nation in Oklahoma and has not received any response."

Attached to the interim review report was a probation officer's report, prepared for Mother's delinquency proceedings, which summarized Mother's dependency history. According to the report, the maternal great-grandmother told an investigator years earlier—in connection with Mother's own dependency proceedings in 2012—that Mother may have Native American heritage "five generations" back on the maternal great-grandfather's side of the family. Significantly for purposes of this appeal, the maternal great-grandmother told the investigator "the tribes may be Cherokee or Chippewa." The probation officer's report further stated that, a few months later, the maternal grandmother told the investigator that the maternal

great-grandmother said the maternal great-great-grandfather "is Cherokee Indian."

The juvenile court did not discuss the probation officer's report at the next hearing. The court did, however, order the Department "to send out notice to the Cherokee tribes with regards to whatever information it is able to obtain from the maternal grandmother in this case." At a court hearing about a month later, the juvenile court expressed its "hop[e] that the [D]epartment is following up on the ICWA issue because what I should have done was set another hearing date just to get a progress on that. But I want the [D]epartment on top of this so that I can actually dispo this case out on June 30th."

In a supplemental report submitted prior to the June 30, 2015, disposition hearing, the Department repeated the maternal grandmother's belief that she and Mother "have American Indian heritage with the Cherokee Nation." The Department did not mention the maternal great-grandmother's reference to possible Chippewa heritage. The Department's supplemental report indicated notice of the dependency proceedings had been sent to the relevant Department of Interior officials, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians, and the Cherokee Nation; all of the tribes responded V.S. was ineligible for membership. The completed forms the Department used to provide such notice were attached to the supplemental report.

Mother filed proposed exhibits for use at the upcoming disposition hearing. Among them was a status review report from Mother's own dependency proceedings. That report repeated the information concerning Mother's possible Indian ancestry that was included in the probation officer's report, i.e.,

the maternal great-grandmother's 2012 statement that Mother may have Cherokee or Chippewa heritage. This status report from Mother's dependency case stated the Department would "attempt to obtain sufficient evidence to submit ICWA 030 notices to the appropriate tribes." There is no other mention of the Chippewa tribe in the appellate record, however, and there is therefore no indication that notice of any juvenile proceedings (either Mother's or V.S.'s) was ever provided to a Chippewa tribe.

At the disposition hearing, the juvenile court admitted Mother's proposed exhibits in evidence, heard argument, declared V.S. a dependent of the court, and ordered her released to Mother on the condition that Mother reside in Department-approved housing. The juvenile court made a finding on the record that there was no reason to know V.S.'s alleged father had any American Indian heritage. The court made no ICWA-related finding on the record as to Mother.[2]

In the months following the disposition hearing, Mother failed drug tests and the Department filed a supplemental petition regarding V.S. (and a new petition regarding E.S., another child that had been born to Mother in the interim). V.S. was detained from Mother (as was E.S.) and placed in foster care. At the detention hearing on these petitions, the juvenile court found "[t]here is no reason to know—and Mother has previously stated in connection with [V.S.'s] case there is no reason to know this is a case involving [ICWA]." When counsel for the Department asked whether Mother had any updated information

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[2] The juvenile court's minute order, however, more broadly states the court "does not have a reason to know that this is an Indian Child, as defined under ICWA, and does not order notice to any tribe or the BIA."

concerning ICWA, the juvenile court agreed "[w]e probably should have a new ICWA-020" and asked Mother, "Have you learned anything since the beginning of [V.S.'s] case that would cause you to believe that you have Indian or Native American ancestry?" Mother said she had not.

The juvenile court later amended and sustained the allegations in the supplemental petition pertaining to V.S. The juvenile court terminated Mother's reunification services near the end of 2017 and terminated her parental rights over V.S. in June 2018. Mother appeals the parental rights termination order.

II. DISCUSSION

There is no dispute that the Department's ICWA-related inquiry and notice to *Cherokee* tribes was adequate. Rather, the dispute centers on whether the Department discharged its ICWA-related obligations with respect to V.S.'s possible *Chippewa* ancestry. The crux of the dispute is whether the maternal great-grandmother's suggestion in 2012 that Mother might have Cherokee or Chippewa heritage was sufficient to trigger ICWA-related process.[3] We hold it was. Although the maternal great-grandmother's statement lacked great detail and was perhaps overshadowed by the multiple other references to Cherokee heritage, it was not a needle in a haystack, nor was it on par with statements in other cases found insufficient for lacking a

[3] The Bureau of Indian Affairs publishes a list of designated tribal agents for service of notice of proceedings under ICWA that includes multiple Chippewa tribes. (83 Fed. Reg. 25685 (June 4, 2018).) Accordingly, we discuss V.S.'s possible eligibility for membership in *a* Chippewa tribe as opposed to *the* Chippewa tribe.

reference to a specific tribe. Thus, we will conditionally affirm the order terminating Mother's parental rights and remand to the juvenile court with directions to oversee the Department's compliance with its notice obligations under ICWA and related California law—and to thereafter make a finding as to whether V.S. is an Indian child.[4]

A. ICWA and Related California Law

"Passed in 1978, the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA, or the Act) formalizes federal policy relating to the placement of Indian children outside the family home." (*In re W.B.* (2012) 55 Cal.4th 30, 40.) "In California, . . . persistent noncompliance with ICWA led the Legislature in 2006 to 'incorporate[ ] ICWA's requirements into California statutory law.' [Citations.]" (*In re Abbigail A.* (2016) 1 Cal.5th 83, 91; see also *In re Breanna S.* (2017) 8 Cal.App.5th 636, 650 [California law "incorporates and enhances ICWA's requirements"].)

At the time the juvenile court terminated Mother's parental rights,[5] section 224.3, subdivision (b) defined those circumstances

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[4] In light of these directions, we need not address Mother's alternative argument that the juvenile court did not make the requisite ICWA finding.

[5] Substantial amendments to Welfare and Institutions Code sections 224.2 and 224.3, which set forth ICWA inquiry and notice requirements, took effect on January 1, 2019. Although we discuss the statutory provisions in effect when the juvenile court terminated Mother's parental rights as to V.S., we would reach the same conclusions under the amended statutes. Undesignated statutory references that follow are to the Welfare and Institutions Code.

that "may provide reason to know the child is an Indian child" to include "(1) [a] person having an interest in the child, including . . . a member of the child's extended family[,] provid[ing] information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe." In any of these circumstances, section 224.3, subdivision (c) required the Department to make further inquiry, "contact[ ] the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership in[,] and contact[ ] the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." Section 224.2, subdivision (a) further provided that if the juvenile court or the Department had reason to know an Indian child was involved in a proceeding, notice regarding that proceeding must be sent to the Bureau of Indian Affairs and all tribes of which the child may be a member or eligible for membership.

B. Remand for Full ICWA Compliance Is Warranted

In support of its position that the maternal great-grandmother's statement about Mother's possible Chippewa ancestry was too speculative and attenuated to merit further inquiry, the Department argues this case is controlled by *In re J.D.* (2010) 189 Cal.App.4th 118 (*J.D.*) and *In re Hunter W.* (2011) 200 Cal.App.4th 1454 (*Hunter W.*). In *J.D.*, a child's paternal grandmother reported that she had Indian ancestry, but she "did not know whether it was from her maternal grandmother or

maternal grandfather," "'[could not] say what tribe it is,'" and could not identify any living relatives who might have more information. (*J.D.*, *supra*, at p. 123.) The Court of Appeal held the paternal grandmother's statement was "too vague, attenuated and speculative to give the dependency court any reason to believe the children might be Indian children." (*Id.* at pp. 124-125.) Similarly, in *Hunter W.*, the Court of Appeal emphasized the parent claiming Indian ancestry could not identify any specific tribe or cite to any "authority in which the court found sufficient information to trigger ICWA when the parent could not even identify the tribe the family may have had connections to." (*Hunter W.*, *supra*, at p. 1468.)

In this case, by contrast, the maternal great-grandmother said Mother might have Cherokee or Chippewa heritage. Uncertainty as between two specific tribal groups—as opposed to a general non-specific assertion of Indian ancestry—does not excuse the Department from satisfying ICWA's notice requirements. (See, e.g., *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1194, 1200 [a mother's statement that she may be eligible for membership in Navajo or Apache tribes triggered ICWA process for both the Navajo and Apache tribes]; *In re Damian C.* (2009) 178 Cal.App.4th 192, 199 [a maternal grandfather's statement that "he had heard his father . . . was Yaqui or Navajo, then heard the family had no Indian heritage, and he did not know to which Yaqui or Navajo tribe the family may have been related or where the tribe or band may be located" triggered ICWA inquiry and notice requirements with respect to federally

recognized Navajo and Yaqui tribes].) Notice to the Chippewa tribes therefore should have been undertaken but was not.[6]

Having reviewed the record, including the notices the Department did send to the Cherokee tribes, we do not fault the extent of the Department's inquiry into American Indian heritage on Mother's side of the family. Rather, we hold only that notice of the juvenile proceedings needed to be provided to the pertinent Chippewa tribes, not just the Cherokee tribes. We will tailor our disposition accordingly.

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[6] The Department's brief on appeal can be read to argue the failure to give notice was harmless because there was no "evidence that anyone up to [V.S.'s] great-grandparents are or were members" of a Chippewa tribe. But even if correct, the argument addresses only one of the three grounds listed in former section 224.3. (Former § 224.3, subd. (b)(1) [there is reason to know a child is an Indian child when an extended family member "provides information suggesting the child is [1] a member of a tribe or [2] eligible for membership in a tribe or [3] one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe"]; see also *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1386-1387, fn. 9 [section 224.3, subdivision (b)(1)'s provision that there is reason to know a child is an Indian child when one or more of the child's parents, grandparents, or great-grandparents were or are members of a tribe does not "create[ ] a general 'remoteness' exception to ICWA notice requirements"].) There is nothing in the record suggesting V.S.'s last Chippewa ancestor (if she has one) is too remote for her to be eligible for membership in a Chippewa tribe.

DISPOSITION

The juvenile court's order terminating Mother's parental rights is conditionally affirmed. The matter is remanded to the juvenile court with directions to ensure the Department demonstrates full compliance with the notice provisions of ICWA and related California law, which will require providing notice of the proceedings to Chippewa tribes. If the juvenile court finds, after proper notice, that V.S. is not an Indian child, the order terminating Mother's parental rights shall stand. If the juvenile court finds V.S. is an Indian child, the court shall vacate the parental rights termination order and proceed in compliance with ICWA and related California law.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.